



**US Army Corps
Of Engineers**

Walla Walla District
201 North Third Avenue
Walla Walla, WA 99362-1876

Public Notice

Date of Notice: August 10, 2001

National NWP Comments Due: September 24, 2001

Regional Conditions Comments Due: September 24, 2001

**NATIONWIDE PERMIT REISSUANCE
REQUEST FOR COMMENTS
AND PUBLIC HEARING ANNOUNCEMENT**

On August 9, 2001, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the Nationwide Permits (NWPs). The proposal is on pages 42070-42100 of Volume 66, Number 154.

The U.S. Army Corps of Engineers Headquarters Office will conduct a public hearing in Washington, DC on September 12, 2001, from 1 pm to 5 pm, at the Government Accounting Office (GAO) Building, 7th floor auditorium, 441 G Street, N.W., Washington, DC. The intent of this hearing is to solicit public comments, both oral and written, on the NWP Program as a whole or on individually proposed NWPs on a national level. The public record for this hearing will conclude at close of business September 22, 2001. This date is separate from the Federal Register notice closing date for the receipt of written comments. For further information on the hearing or the proposed NWPs, please contact Mr. Rich White at 202-761-4599, or Mr. Sam Collinson, at 202-761-4594.

NWPs are general permits issued on a nationwide basis to authorize minor activities with minimal evaluation time. Some activities authorized by NWPs require pre-construction notification to the District Engineer before commencing with the work. This notification requirement to the District Engineer is necessary to ensure that activities authorized by these NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

This notice is the public's opportunity to comment on the proposed re-issuance of existing NWPs and conditions. Comments on national issues relating to these NWPs should be sent to the GAO Building, Office of the Chief of Engineers, Regulatory Branch (ATTN: CECW-OR), 441 G Street, N.W., Washington, DC 20314-1000. Comments on the proposed new and modified NWPs are due by September 24, 2001.

In addition to the NWP general conditions, Division Engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or State. Regional conditions are an important mechanism to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division Engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., States or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. Enclosed with this public notice (Enclosure 1) are the proposed regional conditions currently under consideration by the Northwestern Division for Idaho. The Walla Walla District Corps of Engineers is seeking comments on these proposed regional conditions and the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. In response to the comments received on regional conditions, an additional public notice announcing any additional proposed regional conditions will be published. When the Division Engineer approves regional conditions, those regional conditions become effective when the final NWP public notice is issued. Unless otherwise noted, all proposed regional conditions listed in Enclosure 1 are applicable for activities in Idaho. Comments on regional issues pertinent to the proposed NWPs and regional conditions should be sent to the Regulatory Branch, Corps of Engineers, Walla Walla District, 201 North 3rd Avenue, Walla Walla, WA 99362, phone 509-527-7150. Comments on regional conditions are due by September 24, 2001. Other division or district offices are concurrently publishing similar public notices proposing regional conditions in other regions or States.

For those NWPs that result in a discharge into waters of the United States, individual Tribal or State Section 401 Water Quality Certification or waiver is required. The Corps believes, in general, that these NWPs comply with State Water Quality Certification standards. However, Corps Districts are working individually with the appropriate State or Tribal agencies to identify and resolve any issues before finalizing these NWPs.

Provisional determinations, including environmental documents, have been prepared indicating that these NWPs comply with the requirements for issuance under general permit authority. These documents, as well as the proposed NWPs and public hearing information, are available for viewing at the Walla Walla District, 201 North 3rd Avenue, Walla Walla, Washington or on the Internet at the addresses listed below.

The Corps will prepare final decision documents when the NWPs are issued or modified. These documents will be available as indicated in the preceding paragraph. Furthermore, the NWP decision documents will be

supplemented by Division Engineers to address their decision concerning regional conditions of the NWP's

Enclosure 2 is an index of the proposed NWP's and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP's through the Corps Home Page or the GPO Federal Register address. Both of these sites are listed below.

Internet addresses:

Corps Home Page: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>

World Wide Web users can access the Federal Register through the Government Printing Office (GPO) at <http://www.access.gpo.gov/>

The exact GPO web page is http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=01-19841-filed.pdf

A handwritten signature in blue ink that reads "A. Bradley Daly". The signature is written in a cursive, flowing style.

A. Bradley Daly
Chief, Regulatory Branch

Index of Nationwide Permits, Conditions, Further Information, and Definitions

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5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Maintenance
8. Oil and Gas Structures
9. Structures in Fleeting and Anchorage Areas
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Definitions

Best Management Practices
Compensatory Mitigation
Creation
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Intermittent Stream
Loss of Waters of the United States
Non-tidal Wetland
Open Water
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Preservation
Restoration
Riffle and Pool Complex
Single and Complete Project
Stormwater Management
Stormwater Management Facilities
Stream Bed
Stream Channelization
Tidal Wetland
Vegetated Buffer
Vegetated Shallows
Waterbody

*** Proposed change, simplification or modification to NWP or General Condition**

Regional Conditions
Walla Walla District

August 10, 2001

The following Nationwide Permits (NWP) regional conditions are proposed in the state of Idaho. Regional conditions are placed on NWPs to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resource concerns. This document also includes clarifications of the NWP General Conditions and definitions of terms used in this document. The clarifications contain criteria that will be used to determine compliance with the NWP General Conditions.

PROPOSED REGIONAL CONDITIONS

NWP 3 - Maintenance

1. Section (iii) of this NWP is modified as follows:

a. Projects involving fill in waters of the United States associated with restoration of upland areas may not result in the loss of more than 300 linear feet or the loss of greater than 1/2 acre of non-tidal waters of the United States.

b. Fill discharged into waters of the United States associated with restoration of upland areas damaged by discrete events is not authorized by this NWP in the following waterways and their tributaries: Pend Oreille River, Salmon River, Henrys Fork of the Snake River, South Fork of the Snake River, Boise River upstream of Arrowrock Reservoir, or adjacent to wetlands identified in Idaho Department of Fish and Game's Wetland Conservation Strategy¹ as Class I, Class II, reference and habitat sites.

2. Projects may not create fish migration barriers. Intake structures must be designed to prevent fish entry. Construction must be scheduled to avoid spawning, rearing and migration periods, where practicable (Modifies General Conditions 4 and 20).

¹ Strategies have been developed for Henrys Fork Basin, Northern Idaho, Big Wood River Basin, Southeastern Idaho, East-Central Idaho and Spokane River Basin wetlands. Refer to the Internet site at <http://www2.state.id.us/fishgame/5wlist.htm> for a complete list of waterways.

3. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for wildlife, when practicable. (Modifies General Condition 3).

NWP 7 - Outfall Structures and Maintenance

1. Projects may not create fish migration barriers. Intake structures must be designed to prevent fish entry. Construction must be scheduled to avoid spawning, rearing and migration periods (Modifies General Conditions 4 and 20).

2. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for wildlife, when practicable. (Modifies General Condition 3).

NWP 12 - Utility Activities

1. When trenching through wetlands, the upper 12 inches of topsoil must be removed and stockpiled separately from subsurface soils. Care shall be taken to avoid compaction when stockpiling hydric soils. Once the utility line has been installed and armored, subsurface soils shall be placed in the trench as backfill, followed by the topsoil as the final layer to restore the site to pre-construction contours. No more than 10 percent of subsurface soils may be mixed in with the topsoil. (Modifies NWP 12 (i)).

2. Projects may not create fish migration barriers. Intake structures must be designed to prevent fish entry. Construction must be scheduled to avoid spawning, rearing and migration periods (Modifies General Conditions 4 and 20).

3. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for wildlife, when practicable. (Modifies General Condition 3).

NWP 13 - Bank Stabilization

1. Work must be performed in the dry or during low flows, to the maximum extent practicable.

2. Rock riprap material must be clean, angular and free of sediments.

3. Applicant must provide a statement describing how permanent losses of waters of the United States will be minimized and avoided to the maximum extent practicable, for road crossings in certain waterways. [We are evaluating which waterways to include in this regional condition.]

NWP 14 - Linear Transportation Crossings

1. Projects may not create fish migration barriers. Intake structures must be designed to prevent fish entry. Construction must be scheduled to avoid spawning, rearing and migration periods (Modifies General Conditions 4 and 20).

2. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for wildlife, when practicable. (Modifies General Condition 3).

NWP 27 - Stream and Wetland Restoration Activities

1. For projects involving creation of stream meanders, riffle and pool complexes or pool stream structures, the project must be approved by a scientist experienced in river dynamics such as a hydrologist, fluvial morphologist or wetland scientist.
2. Projects may not create fish migration barriers. Intake structures must be designed to prevent fish entry. Construction must be scheduled to avoid spawning, rearing and migration periods (Modifies General Conditions 4 and 20).
3. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for wildlife, when practicable. (Modifies General Condition 3).

NWP 39 - Residential, Commercial, and Institutional Activities

1. This NWP may not be used for discharges into lakes or ponds (including reservoirs and other impoundments), forested wetlands, peatlands, vernal pools, playa lakes, kettles or prairie potholes.
2. This NWP may not be used in the following waters and their tributaries, or in wetlands adjacent to or contiguous to the following waters and their tributaries: Pend Oreille River, Salmon River, Henrys Fork of the Snake River, South Fork of the Snake River, Boise River upstream of Arrowrock Reservoir, or wetlands identified in Idaho Department of Fish and Game's Wetland Conservation Strategy as Class I, Class II, reference and habitat sites.
3. Projects may not create fish migration barriers. Intake structures must be designed to prevent fish entry. Construction must be scheduled to avoid spawning, rearing and migration periods (Modifies General Conditions 4 and 20).
4. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to

must be scheduled to avoid spawning, rearing and migration periods (Modifies General Conditions 4 and 20).

2. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for, when practicable. (Modifies General Condition 3).

NWP 42 - Recreational Facilities

1. This NWP may not be used for discharges into forested wetlands, peatlands, vernal pools, playa lakes, kettles, prairie potholes or in wetlands identified in Idaho Department of Fish and Game's Wetland Conservation Strategy as Class I, Class II, reference and habitat sites.

2. Projects may not create fish migration barriers. Intake structures must be designed to prevent fish entry. Construction must be scheduled to avoid spawning, rearing and migration periods (Modifies General Conditions 4 and 20).

3. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for wildlife, when practicable. (Modifies General Condition 3).

NWP 43 - Stormwater Management Facilities

1. This NWP may not be used for discharges to construct new stormwater management facilities in lakes, ponds, rivers, streams (except ephemeral streams), or into forested wetlands, peatlands, vernal pools, playa lakes, kettles or prairie potholes.

minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for wildlife, when practicable. (Modifies General Condition 3).

NWP 40 - Agricultural Activities

1. Acreage impacts authorized by this NWP are cumulative for contiguous farm tracts under the same ownership. When impacts to contiguous farm tracts under the same ownership reach 1/2 acre, no further discharges to waters of the United States may be authorized under NWP 40 (Modifies NWP 40 (b)(1)).

2. This NWP does not allow discharges into forested wetlands, peatlands, vernal pools, playa lakes, kettles or prairie potholes or in wetlands identified in Idaho Department of Fish and Game's Wetland conservation Strategy as Class I, Class II, reference and habitat sites (Modifies NWP 40(b)(2)).

3. Projects may not create fish migration barriers. Intake structures must be designed to prevent fish entry. Construction must be scheduled to avoid spawning, rearing and migration periods (Modifies General Conditions 4 and 20).

4. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for wildlife, when practicable. (Modifies General Condition 3).

NWP 41 - Reshaping Existing Drainage Ditches

1. Projects may not create fish migration barriers. Intake structures must be designed to prevent fish entry. Construction

2. This NWP may not be used in the following waters and their tributaries, or in wetlands adjacent to or contiguous to the following waters and their tributaries: Pend Oreille River, Salmon River, Henrys Fork of the Snake River, South Fork of the Snake River, Boise River upstream of Arrowrock Reservoir, or wetlands identified in Idaho Department of Fish and Game's Wetland Conservation Strategy as Class I, Class II, reference and habitat sites.

3. Maintenance or construction of stormwater facilities shall not be performed during flowing water conditions, unless the Corps determines this is not practicable.

4. Projects may not create fish migration barriers. Intake structures must be designed to prevent fish entry. Construction must be scheduled to avoid spawning, rearing and migration periods (Modifies General Conditions 4 and 20).

5. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for wildlife, when practicable. (Modifies General Condition 3).

NWP 44 - Mining Activities

1. This NWP may not be used for discharges into forested wetlands, peatlands, vernal pools, playa lakes, kettles, prairie potholes or in wetlands identified in Idaho Department of Fish and Game's Wetland conservation Strategy as Class I, Class II, reference and habitat sites.

2. This NWP may not be used for discharges from hardrock mining (including placer mining), phosphate mining, or peat mining, because of potential impacts to fisheries and water quality. This condition revokes NWP 44(iii).

3. This NWP may only be used for aggregate mining activities in lower perennial streams that meet the following criteria:

a. Aggregate must be excavated from a dry, unvegetated bar and not pushed across a wetted channel.

b. Aggregate must be removed above the plane of the water surface at the time of dredging, and not in flowing water.

c. A 5-foot buffer must be left in a natural state along the river edge of the aggregate bar during excavation. After aggregate material is removed, the area must be graded level to restore a natural appearance and eliminate potential to trap fish during low water levels.

d. Aggregate material may be temporarily stockpiled for no more than 7 days.

e. Aggregate material must be permanently disposed outside the channel where it will not reenter a water of the United States.

4. Projects may not create fish migration barriers. Construction must be scheduled to avoid spawning, rearing and migration periods (Modifies General Conditions 4 and 20).

5. Disturbed areas must be replanted with native vegetation and stabilized until vegetative root mass can become established to minimize erosion and resultant sediment delivery to the aquatic environment. Avoid disturbing wetland and riparian vegetation, where possible. Materials such as plastic netting that may entrap wildlife or pose a safety concern may not be used for soil stabilization. When riprap is used, it should incorporate bioengineering techniques using root wads and vegetation for wildlife, when practicable. (Modifies General Condition 3).

CLARIFICATION OF NWP GENERAL CONDITIONS:

1. Mitigation. Project mitigation plans must include:

a. A statement detailing why the discharge must occur in waters of the United States, how the project has been designed to minimize impacts and why additional avoidance or minimization cannot be achieved.

b. Provisions for permanent protection of the mitigation site through use of deed restrictions, protective covenants, land trusts or other means of long-term preservation. Mitigation wetlands must be designed to be self-sustaining and cannot be grazed or mowed.

c. A list of performance criteria for determining mitigation success (for example, a species list, acreage of each habitat type to be created, source of hydrology, mitigation concurrent with project construction, etc.) Riparian zones should be replanted with native vegetation. Mitigation success will, generally, be achieved when the mitigation wetlands meet the wetland criteria in the 1987 Wetland Delineation Manual and 80 percent of the mitigation areas are covered with native vegetation within 4 years after construction. Invasive species must be controlled, as practicable, and a contingency plan must be identified (Clarifies General Condition 19).

d. A monitoring plan for the mitigation site, based on the performance criteria, until mitigation is successful.

2. Endangered Species. Non-federal applicants must contact either their local Idaho Department of Fish and Game or the U.S. Fish and Wildlife Service to determine if any listed species or designated critical habitat might be in the vicinity of their project. To contact U.S. Fish and Wildlife Service in Bonner, Boundary, Kootenai, Shoshone, Benewah and Latah Counties, contact Mr. Rick Donaldson at 509-893-8009, e-mail rick.donaldson@fws.gov. To contact U.S. Fish and Wildlife Service for other counties in Idaho, contact Ms. Carol Wanstrom at 208-378-5388, or by e-mail carol.wanstrom@fws.gov. Applicants must notify the District Engineer of their finding (Clarifies General Condition 11).

3. Historic Properties. Applicants must contact the Idaho State Historic Preservation Office at 208-334-384 to determine if their project may affect historic properties listed in the National Register of Historic Places and notify the District Engineer of their finding (Clarifies General Condition 12).

4. Temporary Fills. Temporary fills must be entirely removed from waters of the United States when they are no longer needed for the project. Where practicable, permanent disposal of temporary fills must be outside the 100-year floodplain. Temporary stockpiles may not be placed so a berm or levee is formed parallel to the stream that could confine flows and restrict overbank flow access to the floodplain (Clarifies General Condition 24).

5. Avian Breeding Areas. Nationwide Permits do not obviate the requirement to comply with the Migratory Bird Treaty Act. This act prohibits individuals, government agencies, or corporations from taking a migratory bird, whether the taking is intentional

or unintentional. U.S. Fish and Wildlife Service is the primary Federal agency responsible for the conservation and management of migratory bird resources. Applicants should contact Rick Donaldson at 509-893-8009, e-mail rick.donaldson@fws.gov. for additional information.

DEFINITIONS

3. Forested wetlands: Wetlands characterized by woody vegetation that is 6 meters tall or taller. They are located where moisture is relatively abundant, particularly along rivers and in the mountains and normally possess an overstory of trees and an understory of young trees or shrubs and a herbaceous layer.

Reference: Classification of Wetlands and Deepwater Habitats of the United States, Mr. Lewis M. Cowardin, Office of Biological Services, Fish and Wildlife Service, 1979.

4. High value wetlands: Forested wetlands, peatlands, vernal pools, playa lakes, kettles, prairie potholes, and Class I, Class II, reference, and habitat sites identified in Wetland Conservation Strategies prepared by the Idaho Department of Fish and Game, Conservation Data Center.

5. Invasive species: Species of plants that are not native to an area and whose introduction is likely to cause economic or environmental harm or harm to human health.

6. Kettle: A steep sided, usually basin or bowl shaped hole or depression, commonly without surface drainage, in glacial drift deposits, often containing a lake or swamp. Reference: Bates, Robert L. and Jackson, Julia A., Glossary of Geology, American Geological Institute, Falls Church, 1980.

7. Native species: Species that historically occur in a particular ecosystem, and are not introduced.

8. Peatland: Any waterlogged area containing an accumulation of peat 30 centimeters or more thick. Any type of peat-covered terrain, including fens and bogs. Peat is organic matter (the dead remains of plants) deposited under water soaked conditions as a result of incomplete decomposition.

9. Playa: Shallow, intermittent ephemeral lake in the lowest part of an undrained basin that usually dries up in summer and leaves an unvegetated flat. Playas are underlain by stratified layers of clay, silt, sand and soluble salts and are usually located in arid or semi-arid regions.

10. Prairie Pothole: Closed, shallow to medium deep, bowl-shaped depression in areas typically dominated by grassland vegetation. More shallow depressions can dry out during years of extreme drought, but are usually permanently ponded. Plant communities tend to be dominated by perennial rather than annual plants.

12. Vernal Pool: Shallow, intermittently flooded wet meadow, generally dry for most of the summer and fall.